

AW2019-234

FILED FOR RECORD
At 3:58 o'clock P.M.

THE STATE OF TEXAS

*

DOCKET #

JUL 29 2019

COUNTY OF COMAL

*

COMAL COUNTY, TEXAS

HEATHER N. KELLAR
CLERK OF DISTRICT COURT
COMAL COUNTY, TEXAS
DEPUTY

AFFIDAVIT FOR ARREST WARRANT

I, Jack Johnson II, a peace officer employed by the Texas Department of Public Safety, do solemnly swear that I have reason to believe and do believe that Andrew Michael Pena, an Hispanic Male, DOB: did, on or about July 18, 2019, in Comal County, Texas commit the following offenses

Manslaughter – Penal Code 19.04 - Second Degree Felony

MY BELIEF IS BASED ON THE FOLLOWING FACTS:

My name is Jack Johnson II; I have been employed with the Texas Department of Public Safety for over 5 years. I hold an intermediate peace officers license with the Texas Commission on Law Enforcement. I currently hold the position of Texas Highway Patrol – Trooper II and have been involved with the investigation of numerous cases which have led to the arrest, and prosecution of violators against the peace and dignity of the State of Texas.

Your Affiant conducted the initial investigation on July 18th, 2019, wherein a 2014 maroon Ford F-250 bearing driven by Andrew Michael Pena, was traveling eastbound on SH 46 near Blanco Rd, near a curve, in Comal County and traveled into the opposing lane and resulted in a crash with a vehicle traveling westbound, a 2015 gray Chevrolet Camaro bearing registration Through the crash investigation, skid marks revealed the Chevrolet Camaro made an attempt to evade the collision with the opposing vehicle.

Pena's vehicle then side swiped a second vehicle, a 2012 Buick Enclave bearing registration and then collided head-on with a 2016 Hyundai Accent bearing registration. Pena's vehicle then vaulted over the top of the Hyundai and into the bar ditch. A fifth vehicle (2015 Toyota Camry bearing registration) then struck the rear of the Hyundai. The impact between the Ford and Hyundai resulted in the death of both occupants within the Hyundai, as well as caused injuries to the driver in the Buick. The deceased occupants were identified as Jason Joseph Cantu – H/M DOB: and Magdalena Heather Hernandez – H/F DOB:

CERTIFIED TO BE A TRUE AND
CORRECT COPY.



Heather N. Kellar
HEATHER N. KELLAR
COMAL COUNTY
DISTRICT CLERK

PAGE 1 OF 2

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On 07-20-2019, I conducted an interview with the driver of the Ford, Andrew Michael Pena. During the interview, Pena admitted to intentionally crossing over the double yellow, in a no passing zone, when the crash occurred but claimed it to be in an effort to avoid striking a slower moving vehicle ahead. The evidence I observed on the roadway supports Pena's admission that the crash occurred in the opposing traffic lane.

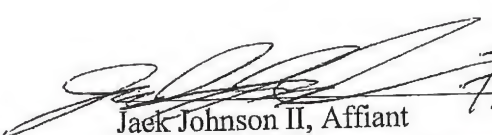
On 07-20-2019, I conducted an interview with the passenger of the Ford, Veronica Bellinghiere. During her interview, she stated that Pena maneuvered to the left across the lane divider in an effort to pass a slower moving vehicle that was in front of them. According to her, Pena, made no attempt to avoid the collision with the Camaro.

Based on the above statements by Pena, Bellinghiere, and the physical evidence I observed at the crash scene, I believe probable cause exist that would lead a reasonable person to believe that Andrew Michael Pena, H/M DOB: did on or about July 18, 2019, **commit the offense of Manslaughter.** I believe based on the above information, Pena was aware of the no passing zone markings on the roadway and further aware of the curvature of the roadway and in-spite of that fact, intentionally crossed over the no passing zone markings into the opposing traffic lanes. As a direct result of Pena's reckless conduct and actions, a crash occurred and the death of two individuals was the result.

I respectfully request that a warrant for the arrest of

Andrew Michael Pena
Hispanic Male

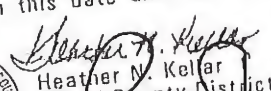
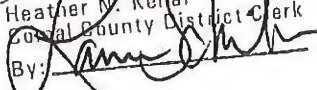


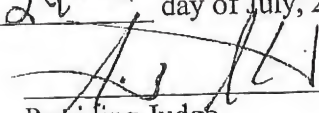
 #14292
Jack Johnson II, Affiant
Texas Highway Patrol – Trooper II

Sworn to and subscribed, before me, on this the 29th day of July, 2019:

STATE OF TEXAS
COUNTY OF COMAL
I certify this to be a true and correct
copy of the record FILED & RECORDED
in the Official Court records of District
Court on this date and time stamped
thereon.




Heather N. Keller
Comal County District Clerk
By: 


Presiding Judge
Comal County, Texas

224th District Jvc

CERTIFIED TO BE A TRUE AND
CORRECT COPY.



HEATHER N. KELLAR
COMAL COUNTY
DISTRICT CLERK

PAGE 2 OF 2

AW2019-234

THE STATE OF TEXAS

*

DOCKET # _____

*

COUNTY OF COMAL

*

COMAL COUNTY, TEXAS

Arrest Warrant

TO THE SHERIFF OR ANY PEACE OFFICER OF COMAL COUNTY, TEXAS.

WHEREAS, Complainant in writing, under oath, has been made before me by Jack Johnson, employed with the Texas Department of Public Safety, which Complaint is attached hereto and expressly made a part hereof for all purposes, stating facts and information in my opinion sufficient to establish probable cause for the issuance of this warrant.

YOU ARE THEREFORE COMMANDED to forthwith arrest,

Andrew Michael Pena
Hispanic Male

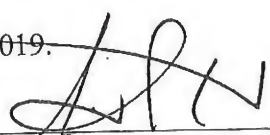


For the offense of

Manslaughter – Penal Code 19.04 - Second Degree Felony

HEREIN, FAIL NOT.

WITNESS MY SIGNATURE, on this the 29th day of July, 2019.



Presiding Judge
Comal County, Texas.

WARRANT OF ARREST

AW2019-234

OFFICER'S RETURN

Came to hand the _____ day of _____, _____, at _____ o'clock
____. M., and executed on the _____ day of _____, _____, at
_____ o'clock ____ M., by arresting the within named
_____ at _____ in _____
County, Texas.

I actually and necessarily traveled _____ miles in the service of this writ, in addition to
any other mileage I may have traveled in the service of other process in this cause
during the same trip.

Comal County, Texas

By

SEARCH WARRANT

STATE OF TEXAS
COUNTY OF COMAL

THE STATE OF TEXAS to the Sheriff or any Peace Officer of Comal County, Texas or any Peace Officer of the State of Texas, Greetings:

WHEREAS, the Affiant whose name appears on the attached affidavit is a Peace Officer under the laws of Texas and did heretofore this day subscribe and swear to said Affidavit before me (which said Affidavit is here now made part hereof for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief expressed there in and establish existence of proper grounds for issuance of this Warrant; now, therefore, you are commanded to enter the suspected place described in said Affidavit to wit: A 2015 black Toyota Camry bearing _____ and labeled with the vehicle identification number _____ located at 1052 Rainbow Dr, Spring Branch, Comal County, Texas 78070 and to search the suspected thing for those items described in said Affidavit; to wit:

- Power Train Control Module (PCM) – Electronic Data and/or
- Air Bag Control Module (ACM) - Electronic Data

Further, you are ORDERED, pursuant to the provisions of Article 18.10, Texas Code of Criminal Procedure, to retain custody of any property seized pursuant to this Warrant, until further order of this Court or any other court of appropriate jurisdiction shall otherwise direct the manner of safekeeping of said property. This Court grants you leave and authority to remove such seized property for this county, if and only if such removal is necessary for the safekeeping of such seized property by you, or if such removal is otherwise authorized by the provisions of Article 18.10, T.C.C.P. You are further ORDERED to give notice to this Court, as a part of the inventory to be filed subsequent to the execution of this Warrant, and as required by Article 18.10, T.C.C.P., of the place where the property seized hereunder is kept, stored and held. In addition, this Court grants you permission to extract the data from the device(s) and analyze such data.

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of its issuance and exclusive of the day of its execution, with your return thereon, showing how you have executed the same, filed in this court.

ISSUED THIS THE 24 day of July, A.D., 2019, at 9:11 o'clock A.M. to certify which witness my hand this day.

District Judge

DIB WALDRIP

AFFIDAVIT OF SEARCH WARRANT
(Article 18.02(12), Texas Code of Criminal Procedure)

The undersigned Affiant, being a Peace Officer under the laws of Texas, and being duly sworn, on oath makes the following statements and accusations:

My name is, Jack Johnson II, and I am commissioned as a peace officer by the Texas Department of Public Safety.

1. There is in Comal County, Texas a suspected thing described and located as follows:

A 2015 black Toyota Camry bearing identification number _____ and labeled with the vehicle located at 1052 Rainbow Dr, Spring Branch, Comal County, Texas 78070. In said suspected thing, you may find a motor vehicle recording device commonly referred to as an Air Bag Control Module (ACM), Power Train Control Module (PCM), Global Positioning System, Event Data Recorder (EDR), or any other device that stores operational data.

2. Said suspected thing is in charge of and controlled by each of the following named parties (hereinafter called "suspected party" whether one or more) to wit:

Roger Clark Lewis being the registered owner and Hill Country Customs Wrecker Service located at 1052 Rainbow Dr, Spring Branch, Comal County, Texas 78070.

3. It is the belief of Affiant, that in said suspected thing there contains evidence of the commission of a crime under the Texas Penal Code, 19.04, Manslaughter. Through my experience and training I have found that contingent upon manufacture and year model of a vehicle(s), the suspect vehicle may contain a device commonly called an Airbag Control Module (ACM), Power Train Control Module (PCM), Global Positioning System, Event Data Recorder (EDR), or some other type of device that stores operational data.

Based on my training and experience, the above make and model vehicle will be equipped with one or more of the above described recording devices and may record certain data, including, but not limited to:

- (1) The speed the vehicle was traveling prior to algorithm enable.
- (2) Engine cycle revolutions per minute prior to algorithm enable.
- (3) Engine throttle pressure prior to algorithm enable.
- (4) Braking information prior to algorithm enable.
- (5) The driver's and/ or passenger's safety belt(s) status.
- (6) Ignition cycles of the vehicle.
- (7) Change in velocity after algorithm enable.
- (8) Steering input

and such evidence may consist of but not limited to the following:

- Power Train Control Module (PCM) – Electronic Data and/or
- Air Bag Control Module (ACM) - Electronic Data

4. The Affiant has probable cause for the said belief by reason of the following facts, to wit: The Affiant employed as a Trooper II with the Texas Department of Public Safety and has been so employed for over 5 years, with specialized training in accident investigations.

Your Affiant conducted the initial investigation on July 18th, 2019, wherein a 2014 maroon Ford F-250 bearing _____ driven by Andrew Michael Pena, was traveling eastbound on SH 46 near Blanco Rd, near a curve, in Comal County, TX and attempted to pass a vehicle in front of him on the left in a no passing zone. The suspect drove into the opposing lane and resulted in a crash with a vehicle traveling westbound, a 2015 gray Chevrolet Camaro bearing registration _____. Through the crash investigation, skid marks revealed the Chevrolet Camaro made an attempt to evade the collision with the opposing vehicle.

Pena's vehicle then side wiped a second vehicle, a 2012 Buick Enclave bearing registration _____ and, then collided head-on with a 2016 Hyundai Accent bearing registration _____. Pena's vehicle then vaulted over the top of the Hyundai and into the bar ditch. A fifth vehicle (2015 Toyota Camry bearing registration _____) then struck the rear of the Hyundai. Based on my crash investigation, I determined that the impact between the Ford and Hyundai resulted in the death of both occupants within the Hyundai, as well as caused injuries to the driver in the Buick. The deceased occupants were identified as Jason Joseph Cantu - H/M DOB: _____ and Magdalena Heather Hernandez - H/D DOB: _____.

On 07-20-2019, I conducted an interview with the driver of the Ford, Andrew Michael Pena. During the interview, Pena admitted to intentionally crossing over the double yellow, in a no passing zone, when the crash occurred but claimed it to be in an effort to avoid striking a slower moving vehicle ahead. The evidence I observed on the roadway supports Pena's admission that the crash occurred in the opposing traffic lane.


On 07-20-2019, I conducted an interview with the passenger of the Ford, Veronica Bellinghiere. During her interview, she stated that Pena maneuvered to the left across the lane divider in an effort to pass a slower moving vehicle that was in front of them. According to her, Pena, made no attempt to avoid the collision with the Camaro.

Your Affiant knows from training and experience that the PCM and ACM, which constitute evidence in this investigation, can further assist in developing cause and conditions for the crash.

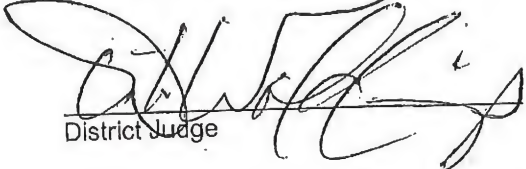
Affiant believes that Pena was aware of the no passing zone markings on the roadway and further aware of the curvature of the roadway and in spite of that fact intentionally crossed over the no passing zone markings into the opposing traffic lanes. As a direct result of his actions, a crash occurred and the deaths of two individuals were the result. I believe foregoing facts establish probable cause to believe the offense of Manslaughter was committed and that the suspected place is likely to contain: data evidence to support this belief.

Affiant requests authority from the Court to transport, remove, or take any property or evidence seized pursuant to the warrant requested herein to any location deemed necessary for purposes of safe-keeping and completion of any investigation or proceedings related to the activities described in this affidavit. Furthermore, to extract the data from the devices and analyze such data.

Wherefore, Affiant asks for issuance of a Search Warrant that will authorize the search of said suspected place for said items, and the seizure of the same.

 #14292
AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY SAID AFFIANT ON THIS THE 24 DAY OF JULY A.D., 2019.


District Judge

RETURN

STATE OF TEXAS
COUNTY OF COMAL

Each of the undersigned Affiants, being a Peace Officer under the laws of Texas and being duly sworn, on oath certified that the foregoing warrant came to hand on the day it was issued and that it was executed on the _____ day of _____, A.D., _____, by making the search directed therein and by arresting and placing in jail each of the following parties to-wit:

And by seizing during such search the following described property; retained by such Peace Officer, and kept, stored and held as hereinafter set out:

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY SAID AFFIANT ON THIS THE _____ DAY OF _____ A.D., _____.

District Judge



Fatality Report



After approved, this report should be sent via email up through your chain of command to the Regional Commander and to your local Communications office. The Communications office will post this report to Sharepoint under the Regional Commands page.

Correction

Correction: ☐

Correction Notes: _____

Information

Officer ID: 14292 Officer Name (Last, First, MI): Johnson II, Jack, P
Station: 6C909 Service: THP
Accident Date: 07/18/2019 Accident Time: 17:51 Accident Type: Fatality County: Comal
Nearest City: Bulverde Highway: SH 46
Distance and Direction to Nearest City: 0.1 miles SE
Speed Limit: 65 Weather Condition: Pick Entry Road Condition: Pick Entry
Synopsis: Unit 1 east bound on SH 46. U2, U3, U4, and U5 west bound on SH 46. U1 crossed the center stripe side swiping U2, and U3. U1 then struck U4 head-on and vaulted over U4, killing the driver and passenger. U5 rear-ended U4 due to the crash. The Driver of U3 was transported to University Hospital in stable condition. All other occupants had minor injuries and refused treatment at the scene.

Vehicles

Vehicle Number: 1 Vehicle Year: 2014 Make: FORD Model: F-250

Towed: HILL COUNTRY TOWING

Vehicle Number: 2 Vehicle Year: 2015 Make: CHEVEROLET Model: CAMARO

Towed: HILL COUNTRY TOWING

Vehicle Number: 3 Vehicle Year: 2012 Make: BUICK Model: ENCLAVE

Towed: HILL COUNTRY TOWING

Vehicle Number: 4 Vehicle Year: 2016 Make: HYUNDAI Model: ACCENT

Towed: HILL COUNTRY TOWING

Vehicle Number: 5 Vehicle Year: 2015 Make: TOYOTA Model: CAMRY

Towed: HILL COUNTRY TOWING

People

Driver: ☒ Deceased: ☐ Injured: ☐ Seat Belt (YNU): Y Vehicle Number: 1
Name Last: Pena Name First: Andrew Name Middle: Michael
Race: H - Hispanic Sex: Male Age: 20 Occupation: Quintana Energy Service
Address: 1206 N Glass Street
City: Victoria State: TX Zip: 77901
Hospital: NA Hospital or Death Location: NA
Time of Death (w/ date): NA Pronounced by: NA Kin notified: ☐
Funeral Home: NA Funeral Home Location: NA
Injury Condition: Treated and Released Injury Type: Pick Entry

Driver: ☐ Deceased: ☐ Injured: ☒ Seat Belt (YNU): Y Vehicle Number: 1
Name Last: Bellinghiere Name First: Veronica Name Middle: Francine
Race: W - White Sex: Female Age: 26 Occupation: Unknown
Address: 1355 Ranch Pkwy #311
City: New Braunfels State: TX Zip: 78130
Hospital: NA Hospital or Death Location: NA
Time of Death (w/ date): NA Pronounced by: NA Kin notified: ☐
Funeral Home: NA Funeral Home Location: NA
Injury Condition: Treated and Released Injury Type: Non-incapacitating

Driver: ☐ Deceased: ☐ Injured: ☒ Seat Belt (YNU): Y Vehicle Number: 2
Name Last: Bogi Name First: Salvadore Name Middle: C
Race: H - Hispanic Sex: Male Age: 38 Occupation: Unknown
Address: 10815 Antares Forest
City: San Antonio State: TX Zip: 78239
Hospital: NA Hospital or Death Location: NA
Time of Death (w/ date): NA Pronounced by: NA Kin notified: ☐
Funeral Home: NA Funeral Home Location: NA
Injury Condition: Treated and Released Injury Type: Pick Entry

Driver: ☐ Deceased: ☐ Injured: ☐ Seat Belt (YNU): Vehicle Number:
Name Last: Name First: Name Middle:
Race: Pick Entry Sex: Pick Entry Age: Occupation:
Address:
City: State: Zip:
Hospital: Hospital or Death Location:
Time of Death (w/ date): Pronounced by: Kin notified: ☐
Funeral Home: Funeral Home Location:
Injury Condition: Pick Entry Injury Type: Pick Entry

Driver: ☐ Deceased: ☐ Injured: ☐ Seat Belt (YNU): _____ Vehicle Number: _____
Name Last: _____ Name First: _____ Name Middle: _____
Race: Pick Entry Sex: Pick Entry Age: _____ Occupation: _____
Address: _____
City: _____ State: _____ Zip: _____
Hospital: _____ Hospital or Death Location: _____
Time of Death (w/ date): _____ Pronounced by: _____ Kin notified: ☐
Funeral Home: _____ Funeral Home Location: _____
Injury Condition: Pick Entry Injury Type: Pick Entry

Assisting Officers

Officer ID: 11524 Agency: DPS
Officer Name (Last, First, MI): Mceathron, Jacob
RDSA: 6C03 Service: THP Station: Sequin Office Phone: 830-379-4210
Non-DPS Assist: _____

Officer ID: 14389 Agency: DPS
Officer Name (Last, First, MI): Harben, Trent
RDSA: 6C03 Service: THP Station: Sequin Office Phone: 830-379-4210
Non-DPS Assist: _____

Officer ID: 13693 Agency: DPS
Officer Name (Last, First, MI): Rimlinger, Adam
RDSA: 6C03 Service: THP Station: Sequin Office Phone: 830-379-4210
Non-DPS Assist: _____

Officer ID: 14436 Agency: DPS
Officer Name (Last, First, MI): Russ, Amanda
RDSA: 6C03 Service: THP Station: Sequin Office Phone: 830-379-4210
Non-DPS Assist: _____

Officer ID: 11674 Agency: DPS
Officer Name (Last, First, MI): Bacon, Michael
RDSA: 6C07 Service: THP Station: Fredricksburg Office Phone: _____
Non-DPS Assist: _____

Central Texas Autopsy, PLLC

1515 S. Commerce St.
Lockhart, TX 78644-4010
512-398-4974
512-398-4975 fax

INITIAL CAUSE OF DEATH REPORT

Date of Report: 7/22/2019

CTA Case No.: 224-19

Name of Deceased: **Jason Joseph Cantu**

Date of Birth:

Date of Post mortem Exam: 7/22/2019

A post mortem exam (Full Autopsy) was performed on the above named deceased and the preliminary cause of death is:

Multiple traumatic injuries

Opinion on Manner of Death: Accident

Suzanna Dana, M.D.

Suzanna Dana, MD
Physician for Central Texas Autopsy, PLLC

Send to:

Judge James Walker
Comal County JP, Pct. 2
PO Box 250
Bulverde, TX 78163
830-438-2266
830-438-3127 fax
walker@co.comal.tx.us
wrighe@co.comal.tx.us

Central Texas Autopsy, PLLC

1515 S. Commerce St.
Lockhart, TX 78644-4010
512-398-4974
512-398-4975 fax

INITIAL CAUSE OF DEATH REPORT

Date of Report: 7/22/2019

CTA Case No.: 223-19

Name of Deceased: **Magdalena Heather Hernandez**
Date of Birth:

Date of Post mortem Exam: 7/22/2019

A post mortem exam (Full Autopsy) was performed on the above named deceased and the preliminary cause of death is:

Multiple traumatic injuries

Opinion on Manner of Death: Accident

Suzanna Dana, M.D.

Suzanna Dana, MD
Physician for Central Texas Autopsy, PLLC

Send to:

Judge James Walker
Comal County JP, Pct. 2
PO Box 250
Bulverde, TX 78163
830-438-2266
830-438-3127 fax
walker@co.comal.tx.us
wright@co.comal.tx.us